

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

|                       |   |                            |
|-----------------------|---|----------------------------|
| BRANDON LESTER,       | ) |                            |
|                       | ) |                            |
| Plaintiff,            | ) |                            |
|                       | ) |                            |
| v.                    | ) |                            |
|                       | ) | Civil Action No. 7:15cv665 |
| SMC TRANSPORT, LLC,   | ) |                            |
|                       | ) |                            |
| and                   | ) |                            |
|                       | ) |                            |
| ISRAEL MARTINEZ, JR., | ) |                            |
|                       | ) |                            |
| and                   | ) |                            |
|                       | ) |                            |
| SALINAS EXPRESS, LLC, | ) |                            |
|                       | ) |                            |
| Defendants.           | ) |                            |

**PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT  
AGAINST SMC TRANSPORT, LLC AND SALINAS EXPRESS, LLC**

The Plaintiff, Brandon Lester ("Lester"), by counsel, files this Motion for Partial Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure herein seeking a ruling from this Court on the following issues:

1. As a matter of law, based upon the undisputed credible evidence in this action, the disabled Salinas Express Tractor that was in use at the time of the accident was owned by Rudy Salinas and controlled by Salinas Express in connection with its business of transporting goods as a for-hire interstate carrier;
2. As a matter of law, the credible undisputed evidence in this action establishes that Roy Salinas and Israel Martinez in using the Salinas Express Tractor in its operations, with its placards and under its ICC license, are employees of Salinas Express and it is

vicariously for any finding of negligence and/or willful negligence against either in connection with the accident;

3. As a matter of law, based upon the credible undisputed evidence, Salinas Express is vicariously liable for any finding of negligence and/or willful negligence against Roy Salinas or Israel Martinez in using the SMC Tractor in connection with Salinas Express's operation and as employees/agents of Salinas Express;

4. As a matter of law, based upon on the credible and undisputed evidence, Roy Salinas and Israel Martinez, in using the SMC Tractor with the permission of SMC, under its SCC license and placards on an interstate job, and in furtherance of its business interests, are also employees/agents of SMC which is vicariously liable for any finding of negligence and/or willful negligence against them; and

5. As a matter of law, based on the credible and undisputed evidence, SMC is negligent *per se* in placing its SMC Tractor in the stream of interstate travel under its ICC license and with its placards in completion of an interstate job without ensuring that it met the financial responsibility requirements mandated by the Federal Motor Carrier Act ("FMA") for the accident at issue.

At this time, Lester is not seeking summary judgment on the remaining issues in the case, including the defendants' negligence, willful negligence and all other causes of action asserted in the Amended Complaint.

*Respectfully submitted,*

BRANDON LESTER

By: s/MELISSA W. ROBINSON

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### CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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